



An  
Bord  
Pleanála

## Inspector's Report ABP-322073-25

<b>Development</b>	A single storey dwelling house, garage, waste water treatment system, entrance and all other ancillary works.
<b>Location</b>	Lackenavea (Egremont), Birdhill, Co. Tipperary.
<b>Planning Authority</b>	Tipperary County Council
<b>Planning Authority Reg. Ref.</b>	2461103
<b>Applicant(s)</b>	Diarmuid & Tatiana Fitzgerald
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Diarmuid & Tatiana Fitzgerald
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	26th May 2025
<b>Inspector</b>	Catherine Dillon

## **1.0 Site Location and Description**

- 1.1. The subject site is located c.1.5km to the north east of the village of Birdhill in the townland of Lackenavea, and on the southern side of the R445 regional road to Nenagh, which is c.18km to the east from the subject site. The Killmastulla River is to the north of the Limerick railway line which extends for a part along the northern side of the R445 and to the north of the subject site.
- 1.2. The site is accessed via an agricultural gate and falls away from the road with a gradual fall across the site towards the south-eastern corner. It has a mature hedge along the road frontage and lateral boundaries, with dense forest land to the south. There is evidence of rushes on the site.
- 1.3. The site has a stated area of 0.53hectares.

## **2.0 Proposed Development**

- 2.1. The proposed development is for a single storey L-shaped 3 bedroom dwelling with a detached garage. The dwelling has a stated floor area of 150m<sup>2</sup> and would have a maximum height of 5m. The garage would have a floor area of 30m<sup>2</sup>.
- 2.2. The dwelling would be set back 17.8m from the road frontage and set in 15.7m from the east and 29m from the west boundaries respectively. The garage would be located to the eastern side of the proposed dwelling.
- 2.3. It is proposed to install a secondary treatment system and soil polishing filter in accordance with the EPA Code of Practice 2021. The development would connect to the public mains water supply.
- 2.4. The proposed vehicular access to the subject site would be to the north eastern corner of the site.
- 2.5. The planning application was accompanied by the following documentation:
  - Rural Housing Need Form
  - Letter from the principal of Ballina NS, confirming Diarmuid Fitzgerald attended the school from 1994-2002, and had an address in Cullenagh, Ballina when he enrolled in 2001.

- Submitted documentation from 3 medical practitioners, outlining applicant's medical condition and supporting an easily accessible house/bungalow for the applicant.
- Two estate agent letters relating to the applicant seeking to purchase a bungalow in the Ballina/Killaloe area.
- Applicant's letter relating to his medical condition.
- Details of Applicant's residences since 2001.
  - 1991-2010 lived with parents in Ballina
  - 2010-2018 lived with parents in Nenagh
  - 2018-2023 lived in own dwelling in Ballina
  - Since 2023 to present living with parents in Ballina.
- Map showing current residence from the subject site (4.46km as the crow flies).
- Letter from electricity supplier with an account number addressed to David Fitzgerald.
- Site suitability assessment.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

On 14<sup>th</sup> February 2025, Tipperary County Council refused planning permission for the development on the following three grounds:

1. The application site is located in a rural area designated as 'Under Urban Influence' under the Tipperary County Development Plan 2022. Section 5.5.2, Table 5.3 and Policy 5-11 of Tipperary County Development Plan 2022-2028 sets out the following requirements (inter alia) for new rural dwellings:
  - Within an 'Area of Urban Influence', the applicant must have resided within 10km of the site where they intend to build for a substantial period of their lives (10 years),

- The Planning Authority can consider an application for a new dwelling in an 'Area Under Urban Influence' for a person with a demonstratable housing need on the basis of exceptional medical circumstances. A planning application made in this regard must be supported by documentation from a registered medical practitioner and disability organisation, proving that a person requires to live in a particular environment, and in a dwelling designed and built purposely to suit their medical needs.

Having regard to the information submitted as part of this planning application regarding the applicants housing and medical circumstances and prior addresses, the Planning Authority is not satisfied that the applicant complies with the requirements of Section 5.5.2, Table 5.3 and Policy 5-11 of Tipperary County Development Plan 2022-2028. The proposed development would therefore be contrary to the stated policy of the Development Plan and would therefore be contrary to the proper planning and sustainable development of the area.

2. Policy 5-13 of the Tipperary County Development Plan 2022-2028 (TCDP) seeks to preserve the carrying capacity of strategic regional roads, identified at Figures 5.3 and 12.2 of the TCDP (in this case the R445), and safeguard the investment in such infrastructure. Policy 5-13 states that the Council will facilitate proposals for new dwellings on strategic routes in the countryside outside of settlements in accordance with the following criteria:

a) Where the applicant meets an 'Economic Need' (see Table 5.3 and Planning Policy 5 -11), and there is no availability of alternative sites to the applicant away from the strategic route. An existing and/or shared domestic dwelling entrance of the applicant's family dwelling should be used where practicable and it will meet sightline requirements set out in Volume 3, Appendix 6, Section 6.1 Road Design and Visibility at a Direct Access.

OR

b) The applicant shall be a son or daughter of a person who meets an 'Economic Need' Category A (i) and (ii) and Category B (i), AND, the applicant meets a 'Social Need'. The new dwelling must share the existing domestic entrance of the applicant's family dwelling and will meet sightline requirements set out in Volume 3, Appendix 6, Section 6.1 Road Design and

Visibility at a Direct Access and there is no availability of alternative sites to the applicant away from the strategic route

OR

c) Where an applicant meets a Social Need and the proposed site has been in the ownership of immediate family members for a minimum of 10 years, and there is no availability of alternative sites to the applicant away from the strategic route. The new dwelling must share the existing domestic entrance of the applicant's family dwelling and will meet sightline requirements set out in Volume 3, Appendix 6, Section 6.1 Road Design & Visibility at a Direct Access.

Having regard to the documentation submitted as part of the planning application, the Planning Authority is not satisfied that the applicant complies with the requirements of Policy 5-13 of the Tipperary County Development Plan 2022 for a rural dwelling at this location. The proposed development therefore would materially contravene Policy 5-13 of the Tipperary County Development Plan 2022 and would be contrary to the proper planning and sustainable development of the area.

3. The applicant has failed to demonstrate compliance with the requirements of the relevant standards for a safe entrance that are identified in Section 6.1 and Tables 6.1 and 6.2 of Volume 3, Appendix 6 of the Tipperary County Development Plan 2022-2028. The proposed development, if granted, would therefore endanger public safety by reason of traffic hazard or obstruction of road users, and would set an undesirable precedent for similar development, contrary to Section 6.1 of the Tipperary County Development Plan 2022-2028, and contrary to the proper planning and sustainable development of the area.

### **3.2. Planning Authority Reports**

- 3.2.1. The planner's report dated 12<sup>th</sup> February 2025, noted the site lay within an 'Area Under Urban Influence', and was not satisfied having regard to the information submitted, the applicants met the CDP rural housing policy. The following is of note within the report:

- The layout and design of the dwelling house and garage were considered acceptable.
- The proposed waste water treatment system complied with the EPA Code of Practice 2021. It was noted an area in the eastern corner was identified as being at risk of pluvial flooding based on historical flood data but that the proposed dwelling and wastewater treatment system would be located away from this area.
- The site was on a regional road where the speed limit was 100km/h and sightlines of 215m were required.
- It was considered future sightlines would encroach onto a third party's land.
- As the applicant had failed to demonstrate a social need and could not facilitate a shared access, the proposed access onto a regional road would not comply with Policy 5-13 of the CDP.

#### 3.2.2. Other Technical Reports

None

#### 3.3. **Prescribed Bodies**

None

#### 3.4. **Third Party Observations**

None

#### 3.5. **Representation**

Cllr. Dr. Phyll Bugler was nominated the public representative on the planning application.

#### 3.6. **Planning History – subject site**

- 3.6.1. **P.A Ref: 24/58:** On 10/05/2024, planning permission was refused to Diarmuid Fitzgerald for a dwelling house, entrance, wastewater treatment system and percolation area and all ancillary site works, on similar grounds to the current appeal:

1. The application site is located in a rural area designated as 'Under Urban Influence' under the Tipperary County Development Plan 2022. Section 5.5.2, Table 5.3 and Policy 5-11 of Tipperary County Development Plan 2022-2028 sets out the following requirements (inter alia) for new rural dwellings:
  - Within an 'Area of Urban Influence', the applicant must have resided within 10km of the site where they intend to build for a substantial period of their lives (10 years),
  - The Planning Authority can consider an application for a new dwelling in an 'Area Under Urban Influence' for a person with a demonstrable housing need on the basis of exceptional medical circumstances. A planning application made in this regard must be supported by documentation from a registered medical practitioner and disability organisation, proving that a person requires to live in a particular environment, and in a dwelling designed and built purposely to suit their medical needs.

The Planning Authority is not satisfied, having regard to the information submitted as part of this application regarding the applicants housing and medical circumstances and prior addresses, that the applicant complies with the requirements of Section 5.5.2, Table 5.3 and Policy 5-11 of Tipperary County Development Plan 2022-2028. The proposed development would therefore be contrary to the stated policy of the Development Plan and would therefore be contrary to the proper planning and sustainable development of the area.

2. Policy 5-13 of the Tipperary County Development Plan 2022-2028 (TCDP) seeks to preserve the carrying capacity of strategic regional roads, identified at Figures 5.3 and 12.2 of the TCDP (in this case the R445), and safeguard the investment in such infrastructure. Policy 5-13 states that the Council will facilitate proposals for new dwellings on strategic routes in the countryside outside of settlements in accordance with the following criteria:
  - a) Where the applicant meets an 'Economic Need' (see Table 5.3 and Planning Policy 5 - 11), and there is no availability of alternative sites to the applicant away from the strategic route. An existing and/or shared domestic dwelling entrance of the applicant's family dwelling should be used where

practicable and it will meet sightline requirements set out in Volume 3, Appendix 6, Section 6.1 Road Design and Visibility at a Direct Access.

OR

b) The applicant shall be a son or daughter of a person who meets and 'Economic Need' Category A (i) and (ii) and Category B (i), AND, the applicant meets a 'Social Need'. The new dwelling must share the existing domestic entrance of the applicant's family dwelling and will meet sightline requirements set out in Volume 3, Appendix 6, Section 6.1 Road Design and Visibility at a Direct Access and there is no availability of alternative sites to the applicant away from the strategic route

OR

c) Where an applicant meets a Social Need and the proposed site has been in the ownership of immediate family members for a minimum of 10 years, and there is no availability of alternative sites to the applicant away from the strategic route. The new dwelling must share the existing domestic entrance of the applicant's family dwelling and will meet sightline requirements set out in Volume 3, Appendix 6, Section 6.1 Road Design & Visibility at a Direct Access.

Having regard to the documentation provided with the application the Planning Authority is not satisfied that the applicant complies with the requirements of Policy 5-13 of the Tipperary County Development Plan 2022 for a rural dwelling at this location. The proposed development, therefore, would materially contravene Policy 5-13 of the Tipperary County Development Plan 2022 and would be contrary to the proper planning and sustainable development of the area.

3. It is a policy of the Council to require development to comply with the relevant standards for a safe entrance identified in Section 6.1 and Tables 6.1 and 6.2 of Volume 3, Appendix 6 of the Tipperary County Development Plan 2022-2028. Having regard to the failure of the applicant to demonstrate compliance with these requirements and the precedent that a grant of permission for the proposed development would create for other, similar developments in the vicinity it is considered that the proposed development would endanger public



safety by reason of traffic hazard or obstruction of road users. The proposed development is therefore considered to be contrary to Section 6.1 of the Tipperary County Development Plan 2022-2028, and contrary to the proper planning and sustainable development of the area.

## **4.0 Policy Context**

### **4.1. Tipperary County Development Plan (CDP) 2022-2028**

- 4.1.1. The site is located in an 'Area Under Urban Influence' as defined under the provisions of the Tipperary County Development Plan. The site has no designations within the CDP.

#### **Volume 1-Section 5.5.2 Rural Housing Policy**

- 4.1.2. This planning policy for one-off houses in the countryside has been developed in compliance with NPO 19 of the NPF, the Circular Letter PL 2/217 relating to the Flemish Decree and the 'Sustainable Rural Housing: Guidelines for Planning Authorities' (DEHLG, 2005). The Council has developed a set of principles, as set out in Table 5.2, for applicants to consider and to inform the policy for rural housing. Table 5.2 of the CDP outlines Rural Housing Technical Principles relating to site & design, housing need & occupancy, sustainable design, traffic safety and the environment including flooding and cultural heritage.

#### **Table 5.3: Housing Need Definitions**

The Council has provided a definition of 'Economic' and 'Social' need in the context of the rural housing policy, as set out below;

##### **Economic**

A person who is actively engaged in farming/agricultural activity on the landholding on which the house is to be built, meeting either of the following:

- (a) A farmer of the land – defined as a landowner with a holding of >20ha.

Or

- (b) An owner and operator of a farming/horticultural/forestry/bloodstock activity on an area less than 20ha, who is engaged in farming activity on a daily basis,

where it is demonstrated that the farming/agricultural activity forms a significant part of their livelihood.

## **Social**

(a) A person who has resided in a rural area (as defined in Table 2.4 Chapter 2 Core Strategy):

- (i) Within 5km of the site where they intend to build for a substantial period of their lives (10 Years) within a 'Primary Amenity Area',
- (ii) Within 10km of the site where they intend to build, for a substantial period of their lives (10 Years) within an 'Area of Urban Influence'

Or

(a) A person with a demonstratable housing need on the basis of exceptional medical circumstances. Any planning application must be supported by documentation from a registered medical practitioner and disability organisation, proving that a person requires to live in a particular environment, and in a dwelling designed and built purposely to suit their medical needs.

4.1.3. **Policy 5-11:** Facilitate proposals for dwellings in the countryside outside of settlements in accordance with NPF Policy NPO 19 for new Housing in the Open Countryside, and designations illustrated in Section 5.5.1, and Table 5.2: Rural Housing Technical Principles for Applicants.

In 'Areas Under Urban Influence' and 'Primary Amenity Areas', the Council will consider single houses for persons where the criteria set out in Category 1A or B, or Category 2 hereunder are met:

### Category 1: 'Economic Need'

A: The applicant must demonstrate an economic need to reside in the area through active employment in farming/agricultural activity (farming, horticulture, forestry, bloodstock). The farm must exceed 20ha in total.

And all the criteria below is met:

- (i) The applicant must be actively engaged in farming,

- (ii) The applicant must demonstrate that they have been engaged in farming at that location for a continuous period of over 5 years prior to making the application,
- (iii) The applicant does not or has never owned a house in the open countryside.

B: The applicant must demonstrate an economic need to reside in the area through active engagement in the running of a farming/horticultural/forestry/bloodstock activity on an area less than 20ha where it is demonstrated to form a significant part of the livelihood of the applicant who is engaged in farming activity on a daily basis, and/or where the farming/agricultural activity provides local employment.

And all the criteria below is met:

- (i) The applicant is trained in good farming practice (or qualifies for an exemption from training), owns or occupies, works and maintains land for the purposes of achieving outputs, and demonstrate that they have been engaged in farming/agricultural activity at that location for a continuous period of over 5 years prior to making the application
- (ii) The applicant does not, or has never owned a house in the open countryside,
- (iii) A detailed 5-year business plan will be required to demonstrate 'compliance with Section (i).

#### Category 2: 'Social Need'

The applicant must demonstrate a social need to reside in the local rural area for social purposes in line with Table 5.3.

And all the criteria set out below is met:

- (i) Within a 'Primary Amenity Area', the applicant must have resided within 5km of the site where they intend to build for a substantial period of their lives (10 years),
- (ii) Within an 'Area of Urban Influence', the applicant must have resided within 10km of the site where they intend to build for a substantial period of their lives (10 years),

And

(iii) The applicant does not, or has never owned a house in the open countryside.

- 4.1.4. **Policy 15-2:** Require that all new septic tanks, proprietary effluent treatment systems and percolation areas to be located and constructed in accordance with the Water Services Guidelines for Planning Authorities (and any review thereof) and the Code of Practice for Domestic waste water treatment systems (EPA, 2021) (and any amendment) and the development management standards of this Plan as set out in Volume 3.
- 4.1.5. **Policy 15-4:** Collaborate with Irish Water in contributing towards compliance with the European Union (Drinking Water) Regulations Drinking Water Regulations 2014 (as amended) and compliance of water supplies with the parameters identified in these Regulations.
- 4.1.6. **Policy 15-6:** Requires development proposals to connect to the public water supply, where such facilities are available.
- 4.1.7. **Policy 15-7:** Requires all new development to provide a separate foul and surface water management system and to incorporate nature-based water sensitive urban design, where appropriate, in new development and the public realm.
- 4.1.8. **Policy 5-13:** Preserve the carrying capacity of strategic regional roads, identified at Figures 5.3 and 12.2, and safeguard the investment in such infrastructure. The Council will facilitate proposals for new dwellings on strategic routes in the countryside outside of settlements in accordance with the following criteria:
- a) Where the applicant meets an 'Economic Need' (see Table 5.3 and Planning Policy 5 - 11), and there is no availability of alternative sites to the applicant away from the strategic route. An existing and/or shared domestic dwelling entrance of the applicant's family dwelling should be used where practicable and it will meet sightline requirements set out in Volume 3, Appendix 6, Section 6.1 Road Design and Visibility at a Direct Access.

OR

- b) The applicant shall be a son or daughter of a person who meets and 'Economic Need' Category A (i) and (ii) and Category B (i), AND, the applicant meets a 'Social Need'. The new dwelling must share the existing domestic entrance of the applicant's family dwelling and will meet sightline requirements set out in Volume

3, Appendix 6, Section 6.1 Road Design and Visibility at a Direct Access and there is no availability of alternative sites to the applicant away from the strategic route.

OR

- c) Where an applicant meets a Social Need and the proposed site has been in the ownership of immediate family members for a minimum of 10 years, and there is no availability of alternative sites to the applicant away from the strategic route. The new dwelling must share the existing domestic entrance of the applicant's family dwelling and will meet sightline requirements set out in Volume 3, Appendix 6, Section 6.1 Road Design & Visibility at a Direct Access.

- 4.1.9. Volume 3- Appendix 6: Development Management Standards- Section 4 Residential Development. Of relevance to this appeal are the following

Section 4.3 Wastewater Treatment Systems- Section 4.3.1

Connections to public services shall be made where available. For an on-site wastewater disposal system, the standards, guidance, design and orientation of the EPA Code of Practice for Domestic Wastewater Treatment Systems (EPA, 2021), shall be met. A report prepared by a qualified site assessor in accordance with the standards shall be submitted with the planning application.

Section 4.14 Domestic Garages

The scale and detail of domestic garages shall be subordinate to the main dwelling and their use shall not impact on adjoining residential amenity. Detached garages should be less than 70sqm and should be discreetly located on the site to compliment the dwelling appearance and finish.

Section 6.0 Parking, Traffic and Road Safety

This section sets out the forward visibility requirements for a vehicular access. Tables 6.1 and 6.2 set out the mandatory X and Y distances for vehicular accesses. On local roads the X distance is 4.5m or 2.0m on lightly trafficked roads. On non-national roads, in cases of particular difficulty, the use of a lower design speed for a given mandatory speed limit (as set out in Table 6.2) may be accepted by the Council. In such a case, the applicant must demonstrate to the satisfaction of the Council that the 'operational speed' of the road is less than the specified design

speed. In such cases, the Council may accept the use of the lower speed than identified in column in Table 6.2.

#### Volume 3 - Appendix 4 Rural Housing Design Guide

This Appendix considers issues regarding site selection, landscape character and context, settlement pattern, flood risk, vehicle access, drainage and the design of a house in a rural area. The subject site does not lie within a designated heritage or amenity area and would not impact on the scenic value of listed routes or views within the CDP.

#### 4.1.10. Section 28 Guidelines

‘Sustainable Rural Housing: Guidelines for Planning Authorities’ 2005.

‘Development Management Guidelines for Planning Authorities’ 2007

‘The Planning System & Flood Risk Management Guidelines for Planning Authorities’ 2009.

#### 4.2. **Natural Heritage Designations**

<b>Natural Heritage Designations</b>	<b>Distance from site</b>
Lower River Shannon SAC (site code: 002165)	c.130m to the north
Lough Derg pNHA (site code: 000011)	c.4km to the north west
Lough Derg Shannon SPA (site code: 004058)	c.4km to the north west
Slieve Bernagh Bog SAC (site code: 002312)	c.8km to the north west
Slievefelim to Silvermines Mountains SPA (site code: 004165)	c.7km to the east
Silvermines Mountains West SAC ( site code:002258)	c.7.8km to the east
Silvermine Mountains pNHA (site code: 000939)	c.12km to the east
Bleanbeg Bog NHA (site code:002450)	c.8km to the south east
Keeper Hill SAC (site code: 001197)	c.5.5km to the south east

Darrygareen Heath pNHA (site code: 000931)	c.9.1km to the south east
Clare Gen SAC (site code: 000930)	c.9.4km to the south
Glenomra Wood SAC (site code: 001013) & Glenomra WoodpNHA (site code: 001013)	c.10.5km to the west
Slieve Bernagh Bog SAC (site code: 002312)	c.8km to the north west

### 4.3. EIA Screening

- 4.3.1. The proposed development has been subject to preliminary examination for environmental impact assessment (refer to Form 1 and Form 2 in Appendix 1 of this report). Having regard to the characteristics and location of the proposed development and the types and characteristics of potential impacts, it is considered that there is no real likelihood of significant effects on the environment. The proposed development, therefore, does not trigger a requirement for environmental impact assessment screening and an EIAR is not required.

### 4.4. Water Framework Directive

- 4.5. The subject site is located in a rural area and is c.130m to the south of the Killmastulla River.
- 4.6. The proposed development comprises a single storey dwelling, garage, waste water treatment system and percolation area, entrance and all associated works as outlined in detail in Section 2 of this report.
- 4.7. No water deterioration concerns were raised in the planning appeal.
- 4.8. I have assessed the proposed development and have considered the objectives as set out in Article 4 of the Water Framework Directive which seek to protect and, where necessary, restore surface & ground water waterbodies in order to reach good status (meaning both good chemical and good ecological status), and to prevent deterioration. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no

conceivable risk to any surface and/or groundwater water bodies either qualitatively or quantitatively. The reason for this conclusion is as follows:

- The nature of the works being small scale and nature of the development.
- The subject site being located c.130m from the Killmastulla River and lack of hydrological connection.

4.8.1. I conclude that on the basis of objective information, that the proposed development will not result in a risk of deterioration on any water body (rivers, lakes, groundwaters, transitional and coastal) either qualitatively or quantitatively or on a temporary or permanent basis or otherwise jeopardise any water body in reaching its WFD objectives and consequently can be excluded from further assessment (Refer to Appendix 3 of this report).

## **5.0 The Appeal**

### **5.1. Grounds of Appeal**

5.1.1. The First Party Diarmuid and Tatiana Fitzgerald have submitted the following summarised information to support their appeal:

- Subject site is within a 10km radius from where applicant currently resides.
- Has spent most of his life in Ballina.
- Currently resides with his mother because her dwelling can accommodate his medical needs, which is within 5km of the subject site, and therefore Policy 5-11 is applicable.
- Fully committed to living at the subject site for over 10 years and plans to adapt home to meet medical needs.
- Submitted documentation from 3 medical practitioners, outlining medical condition and in support of easily accessible housing/bungalow. Notes he has requested additional medical files in relation to his illness but due to the amount of paperwork involved there has been a delay in receiving them.
- Signed letter in support of his proposal from 4 local councillors.



- Appellant states research indicates that individuals with complex medical needs who live outside urban areas often experience less stress and greater personal privacy.
- His medical condition is regarded as a disability under the provisions of the Equality Act 2010.
- Submitted 2 letters from estate agents within the areas of Ballina & Killaloe which state there are no bungalows within the applicant's budget available for purchase within these areas in the last 2 years.
- Current home no longer satisfies his medical needs.
- Subject site was purchased in December 2023.
- Site location map with 215m sightlines indicated on a layout plan.
- Copy of a letter submitted with the planning application indicating the site was selected because it was affordable and a 10minute drive from his parent's house, who are getting old, and he would like to help them out. This letter also indicates the site is 5minutes from his place of work and that he is a keen angler and keeps his boat in Ballina. Outlines his place of residence since 1991 and that both him and his wife moved back to his parents in 2023 in Ballina.

## **5.2. Planning Authority Response**

5.2.1. The P.A responded to the appeal on 7<sup>th</sup> April 2025 and state as follows:

- The P.A considered fully the planning application and all supporting information in assessing the application and in reaching the recommendation to refuse permission.
- The P.A note no drawings have been included with the appeal submission demonstrating that the required sightlines can be achieved, as per the requirements of Section 6 Volume 3, Appendix 6 of the Tipperary County Development Plan 2022.
- Request An Bord Pleanála uphold the decision to refuse permission.

### 5.3. Observations

#### 5.3.1. None

## 6.0 Assessment

### 6.1. Introduction

- 6.1.1. I would draw to the attention of the Board to the planning history of the appeal site in Section 4 of this report. Planning permission was refused for a similar development, by Mr. Diarmuid Fitzgerald (applicant), under P.A Ref: 24/58 on 10<sup>th</sup> May 2024, for similar reasons to the current appeal. This decision was not the subject of an appeal to the Board. The current appeal proposal is similar to the previous planning application.
- 6.1.2. Having examined the application details and all other documentation on file, including the submissions received in relation to the appeal, the reports of the local authority, and having inspected the site, and having regard to the relevant local/regional/national policies and guidance, I consider the main issues to be considered are the 3 reasons for refusal in the P.A decision. The design and siting of the proposed dwelling, garage and treatment system have been assessed and are considered acceptable.
- 6.1.3. I therefore consider that the substantive issues to be considered in this appeal are as follows:
- Compliance with Rural Housing Policy;
  - Traffic safety and vehicular access;
  - Flooding, and
  - Appropriate Assessment.

### 6.2. Rural Housing Policy

- 6.2.1. Refusal reason no.1 relates to the planning authority not being satisfied that the applicant complies with the requirements of Section 5.5.2, Table 5.3 and Policy 5-11 of the County Development Plan.

- 6.2.2. The site lies within a rural area which is designated as a 'Rural Area under Urban Influence' to which Policy 5-11 of the CDP is applicable regarding proposals for dwellings in such areas. In 'Areas under Urban Influence', the provision of single housing in the countryside is based on the core consideration of demonstrable 'economic or social' need to live in a rural area, and siting, environmental and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements within the CDP.
- 6.2.3. To qualify under the 'Economic Need' category for a dwelling in this area, the applicant must primarily be actively engaged in farming or similar agricultural activity. Neither applicant is employed in farming or in an agricultural activity.

#### Social Need

- 6.2.4. To qualify under the second category 'Social Need' for a dwelling in an 'Area Under Urban Influence' the applicant as outlined in Table 5.3 of the CDP, must have resided in a rural area (as defined in Table 2.4 of the Core Strategy)<sup>1</sup> and lived for a substantial period (10 years) within 10km of the subject site.
- 6.2.5. The applicant Diarmuid Fitzgerald states he lived with his parents in Cullina, Ballina, for 9 years and in Nenagh thereafter for 8 years. Ballina is a Local Town and Nenagh is a Key Town within Table 2.4 of the Core Strategy Table, and the applicant has not therefore lived in a rural/open countryside area as defined in Table 2.4 of the Core Strategy.
- 6.2.6. Both applicants bought their own property in Ballina in 2018 and lived there for 5 years before moving into Diarmuid's parent's house in 2023 in Ballina. The parent's house is located c.5km (as the crow flies) from the subject site in Ballina town. A letter was submitted from the principal of Ballina Primary School confirming Dermot Fitzgerald attended the school from 1994-2002 and, when he enrolled in 2001, he had an address in Cullenagh, Ballina.
- 6.2.7. I note a letter with a number of invoices with dates referring to the years 2017-2019 from Electric Ireland was submitted with the planning application with a David

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<sup>1</sup> Table 2.4 Core Strategy Table permits 34% Rural housing growth in Rural settlements <1,500 and open countryside.

Fitzgerald's name on them and the parent's current property address. These invoices do not indicate to me that the applicant resided at this address at that time.

- 6.2.8. Nevertheless, the applicant has never lived in a rural/open countryside area as defined by the core strategy of the CDP and required by Table 5.3 to qualify for a rural dwelling under the Social Need category. Policy 5-11 relating to the social need category permits an applicant who has resided within 10km of a site where they intend to build for a substantial period of their lives (10 years) subject to meeting the criteria in Table 5.3 of the CDP. The applicant currently resides c.5km (as the crow flies) from the subject site in Ballina. However, Ballina cannot be considered as falling into the category of a rural area as specified in Table 5.3, under the 'Social' need definition. I therefore do not consider the distance of the subject site is of relevance in this instance, as Ballina is not a rural area.

#### Exceptional Medical Circumstances

- 6.2.9. Table 5.3 of the CDP permits a person with a demonstrable housing need in the context of the rural housing policy on the basis of 'exceptional medical circumstances'. The applicant has submitted two letters signed by 3 medical practitioners outlining Diarmuid Fitzgerald's medical circumstances. However, Table 5.3 of the CDP specifies that the letters prove 'that a person requires to live in a particular environment, and a dwelling designed and built purposely to suit their needs'. The medical practitioners' letters state that it is important for the applicant to live in a 'one level' property with ready access to a bedroom and bathroom for self-care and easily accessible housing, but there is nothing in either letter to suggest that it must be in a rural area, or indeed this rural area.
- 6.2.10. The Sustainable Rural Guidelines recommends that planning authorities should recognise that exceptional health circumstances, supported by relevant documentation from a registered medical practitioner and a disability organisation, may require a person to live in a particular environment or close to family support. In such cases, and in the absence of any strong environmental, access or traffic reasons for refusal, a planning authority should consider granting permission, subject to conditions regarding occupancy. However, I do not consider the medical practitioner's letters confirms the appellant's need to live in a particular environment (i.e this rural area) but rather suggests the appellant requires a single storey dwelling

(i.e accessible housing) for their medical needs. Such a dwelling could be accommodated within a settlement or town.

- 6.2.11. The applicant has submitted letters from two estate agents in the Ballina/Killaloe area stating the lack of supply of bungalows in the area which has increased the price of such properties and that nothing has become available within the applicant's budget within the last two years. This however is not a material planning consideration.

### Conclusion

- 6.2.12. I note the applicant has attached a letter with 4 councillor signatures which states the Council failed to acknowledge the 'housing need' of the applicant based on exceptional medical circumstances. However, having regard to the foregoing, I consider the appellants do not meet the criteria in Policy 5-11 for a rural house in this location as they have not resided in a rural area but rather in the towns of Ballina or Nenagh for most of their lives.
- 6.2.13. I also consider the appellants do not qualify under Table 5.3 of the CDP on 'exceptional medical grounds' either as outlined above, which clearly states that a person requires to live in a particular environment, and in a dwelling, designed and built purposely to suit their medical needs.

## **6.3. Traffic Safety and vehicular access**

- 6.3.1. Refusal reasons nos. 2 and 3 of the P.A's decision relates primarily to the proposed vehicular access onto the regional road and compliance with Policy 5-13 and Section 6.1 of the CDP in this regard.
- 6.3.2. The proposed vehicular access would be located along the north eastern corner of the subject site and would access onto the R445 regional road. Policy 5-13 of the CDP outlined in detail within Section 5.1 of this report seeks to preserve the carrying capacity of strategic regional roads such as the R445 but will permit vehicular accesses onto such roads for new dwellings outside settlements where the applicant meets an economic or social need subject to certain criteria being met.
- 6.3.3. The applicant in their grounds of appeal has applied for a rural dwelling in this area based on meeting the 'Social Need' category and/or 'exceptional medical

circumstances' category. Policy 5-13 c) permits an access onto a regional road where an applicant meets a social need, and the site has been in the ownership of immediate family members for a minimum of 10 years and there are no alternative available sites away from the strategic route. It further requires the access to the new dwelling to share the existing entrance of the applicant's family dwelling and meet the required sightlines.

- 6.3.4. The applicant purchased the site in 2023 and the land has not therefore been in the ownership of immediate family members for a minimum of 10 years, and therefore it is not possible to share an existing family entrance. The applicant therefore does not meet the specific criteria in Policy 5-13 for an access onto a regional road.
- 6.3.5. Indicative sightlines of 215m each side of the proposed entrance were submitted with the grounds of appeal submission. The speed limit on this stretch of the R445 is 100km/h and on the day of my site inspection it was a busy road. The required sightlines in accordance with Table 6.1 of the CDP are 215m on either side of the proposed access with a setback of 2.4m from the road edge. To achieve these sightlines would require the appellant to encroach on adjoining lands to the east and west. The subject site being at a lower level than the regional road would require the maximum sightlines in order to edge out safely from the site onto the road. I noted there were 3 mature trees in the north east corner of the site on the shared boundary which would have to be removed to facilitate sightlines to the east of the proposed vehicular access and a mature hedge on lands to the west which would be required to be set back, neither of which are in the ownership of the appellant.
- 6.3.6. The advice in the Development Management Guidelines states where it is doubtful that a condition requiring the maintenance of sightlines by the removal or trimming of hedges or trees on a neighbour's property is within the applicant's power to fulfil, even where the neighbour has given consent that consent may subsequently be withdrawn. The applicant has not provided the adjoining neighbour's consent. Nevertheless, the Law Society has advised that such conditions may create difficulty as to title and have advised that in such cases the applicant be required to obtain an easement over the neighbour's property thus obtaining the legal right to maintain the sightline.

### Conclusion

6.3.7. The CDP seeks to protect the safety, capacity and efficiency of regional roads and avoid the creation of new accesses and as such, exceptional circumstances apply when providing a new access onto such roads. I note in the appellant's grounds of appeal that he considers the P.A should have sought further information regarding the sightlines, and that this reason has been added to strengthen the P.A refusal of the planning application. I would not concur with this view, as the appellant does not meet the specific criteria outlined in Policy 5-13 for a new access onto a regional road and is unable to achieve the required sightlines within the boundary of the subject site.

#### **6.4. Flooding**

6.4.1. The planner's report refers to an area in the eastern corner of the site being identified at a risk of pluvial flooding on the national historical flood data, but as there was no development proposed on this area of the site, the P.A has no concerns in this regard.

6.4.2. I noted on my site inspection the land was low lying and there were a significant number of rushes on the land, which can be an indicator of wet ground. The presence of rushes was also referenced in the Site Suitability Assessment report submitted as part of the planning application.

6.4.3. The CFRAMS maps on floodmaps.ie (accessed 5/6/2025) indicates the area to the north of the railway line, and beyond the R445, which includes the course of the Killmastulla River is subject to flooding. The appeal site however is not subject to flooding on the CFRAMS maps and is not indicated as being on benefitting lands. There is no record of past flood events at the site or pluvial or fluvial flooding on the subject lands. Therefore to conclude, the site according to floodmaps.ie and CFRAMS mapping is not subject to flooding.

#### **7.0 Appropriate Assessment**

7.1. I have considered the proposed development in light of the requirements of S177U the Planning and Development Act 2000 as amended.

- 7.2. The subject site is located at Lackenavea, Birdhill, Co. Tipperary. The proposed development comprises a single dwelling and wastewater treatment system and associated works.
- 7.3. It is not located within or immediately adjacent to a European site. The nearest European sites are:
- Lower River Shannon SAC (site code:002165) approximately 130m to the north of the subject site.
  - Lough Derg Shannon SPA (site code: 004058) approximately 4km to the north west of the site.
- 7.4. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any European Site. The reason for this conclusion is as follows:
- The small scale and nature of the development,
  - Location-distance from nearest European Sites and lack of connections.
  - Taking into account the AA Screening determination by the PA.
- 7.5. I conclude that on the basis of objective information, that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects.
- 7.6. Likely significant effects are excluded and therefore Appropriate Assessment (stage 2) (under Section 177V of the Planning and Development Act 2000) is not required.

## **8.0 Recommendation**

I recommend that the planning permission be refused for the reasons set out below.

## **9.0 Reasons and Considerations**

1. Having regard to the location of the site within an 'Area Under Urban Influence' as identified in Section 5.5.2, Table 5.3 and Policy 5-11 in the Tipperary County Development Plan 2022-2028 and to the Sustainable Rural Housing Guidelines for Planning Authorities issued by the Department of the



Environment, Heritage and Local Government in April, 2005, which seek to manage the growth of areas that are under urban influence to avoid over-development and to ensure that the provision of single housing in rural areas under urban influence are provided based upon economic, social or exceptional medical circumstances needs to live in a rural area, it is considered that it has not been satisfactorily demonstrated that the applicant comes within the scope of the housing need criteria as set out in the Development Plan for a house at this location. The proposed development, in the absence of any identified locally based or exceptional medical need for the house, would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. The proposed development is contrary to Policy 5-13 and the development management criteria in Section 6.1 and Tables 6.1 and 6.2 of Volume 3 of the Tipperary County Development Plan 2022-2028 with regards to new residential entrances onto strategic routes (in this instance the R445), in that to grant the proposed development would reduce the capacity of the road, interfere with the safety and free flowing nature of traffic on the road, adversely affecting the use of the strategic road corridor, and a safe means of access and visibility has not been demonstrated in accordance with the Tipperary County Development Plan 2022-2028. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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Catherine Dillon  
Planning Inspector

17<sup>th</sup> June 2025

## 10.0 Appendix 1 EIA Screening

### Form 1 - EIA Pre-Screening

<b>Case Reference</b>	322073-25
<b>Proposed Development Summary</b>	Single storey dwelling house, garage, waste water treatment system, entrance and all ancillary works
<b>Development Address</b>	Lackenavea, Birdhill, Co.Tipperary
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b>	<input checked="" type="checkbox"/> Yes, it is a 'Project'. Proceed to Q2.
	<input type="checkbox"/> No, No further action required.
<b>2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?</b>	
<input type="checkbox"/> Yes, it is a Class specified in Part 1.	
<input checked="" type="checkbox"/> No, it is not a Class specified in Part 1. Proceed to Q3	
<b>3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?</b>	
<input type="checkbox"/> No, the development is not of a Class Specified in Part 2, Schedule 5 or a prescribed type of proposed road development under Article 8 of the Roads Regulations, 1994.	
<input type="checkbox"/> Yes, the proposed development is of a Class and meets/exceeds the threshold.	
<input checked="" type="checkbox"/> Yes, the proposed development is of a Class but is sub-threshold.	Class 10(b)(i) of Part 2: threshold 500 dwelling units.
<b>4. Has Schedule 7A information been submitted AND is the development a Class of Development for the purposes of the EIA Directive (as identified in Q3)?</b>	

Yes <input type="checkbox"/>	Screening Determination required (Complete Form 3)
No <input checked="" type="checkbox"/>	Pre-screening determination conclusion remains as above (Q1 to Q3)

**Inspector:** Catherine Dillon

**Date:** 17<sup>th</sup> June 2025

## Form 2 - EIA Preliminary Examination

<b>Case Reference</b>	322073-25
<b>Proposed Development Summary</b>	Single storey dwelling house, garage, waste water treatment system, entrance and all ancillary works.
<b>Development Address</b>	Lackenavea, Birdhill, Co.Tipperary
<b>This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.</b>	
<b>Characteristics of proposed development</b>  (In particular, the size, design, cumulation with existing/ proposed development, nature of demolition works, use of natural resources, production of waste, pollution and nuisance, risk of accidents/disasters and to human health).	<p>There are a number of houses along the northern side of the R455 west of the subject site. There is a quarry entrance to the west of the site on the southern side of the R455.</p> <p>The nature and size of the proposed dwelling is not considered exceptional in the context of neighbouring houses.</p> <p>I do not consider that the level of waste generated would be significant in the local, regional or national context. No significant waste, emissions or pollutants would arise during the construction or operational phase due to the nature of the proposed use.</p> <p>The proposed development does not involve any demolition works. The development, by virtue of its residential type, does not pose a risk of major accident and/or disaster.</p>
<b>Location of development</b>  (The environmental sensitivity of geographical areas likely to be affected by the development in particular existing and approved land use, abundance/capacity of natural resources, absorption capacity of natural environment e.g. wetland, coastal zones, nature reserves, European sites, densely populated areas, landscapes, sites of historic, cultural or archaeological significance).	<p>The site is located approximately 130m south of the Lower Shannon SAC (site code: 002165).</p> <p>The Kilmastulla River lies to the north of the railway line c.130m to the north of the subject site and flows in a westerly direction towards Lough Derg. The site is not recorded on flood maps.ie (accessed 5/6/2025) as being subject to flooding.</p> <p>Given that there are no hydrological connections I have concluded in my AA Screening that that the proposed development would not likely have a significant effect on any European site.</p> <p>The subject site is not located within or adjoins any environmentally sensitive sites or protected sites of ecological importance, or any sites known for cultural or historical significance. TN025-028 – Enclosure closest monument to north of railway line.</p>

	I consider that there is no real likelihood of significant cumulative impacts having regard to other existing and/or permitted projects in the adjoining area.
<b>Types and characteristics of potential impacts</b>  (Likely significant effects on environmental parameters, magnitude and spatial extent, nature of impact, transboundary, intensity and complexity, duration, cumulative effects and opportunities for mitigation).	Having regard to the limited nature of construction works associated with the development, its location removed from any sensitive habitats / features, the likely limited magnitude and spatial extent of effects, and the absence of in combination effects, there is no potential for significant effects on the environment.
<b>Conclusion</b>	
<b>Likelihood of Significant Effects</b>	<b>Conclusion in respect of EIA</b>
<b>There is no real likelihood of significant effects on the environment.</b>	<b>EIA is not required.</b>

**Inspector:** Catherine Dillon

**Date:** 17<sup>th</sup> June 2025

**DP/ADP:** \_\_\_\_\_ **Date:** \_\_\_\_\_

(only where Schedule 7A information or EIAR required)

## 10.1. Appendix 2 Water Framework Directive Screening

WFD IMPACT ASSESSMENT STAGE 1: SCREENING						
Step 1: Nature of the Project, the Site and Locality						
An Bord Pleanála ref. no.	322073-25	Townland, address		Lackenavea, Birdhill, Co.Tipperary		
Description of project		Single storey dwellinghouse, garage, waste water treatment system, entrance and all ancillary works				
Brief site description, relevant to WFD Screening,		Site is relatively flat but falls towards the south-eastern part of the site. Subsoils comprise a mixture of sand and gravel type (Lower Paleozoic/Devonian) and made ground to the rear of the appeal site. The Killmastulla river is located c.130 metres north of the site. Evidence of rushes on the site. Groundwater vulnerability high at the site.				
Proposed surface water details		Development will be drained to a soakpit and discharged to groundwater. Water level at 1.1m bgl.				
Proposed water supply source & available capacity		Connection to public mains				
Proposed wastewater treatment system & available capacity, other issues		WWTS and raised percolation area				
Others?		Not applicable				
Step 2: Identification of relevant water bodies and Step 3: S-P-R connection						
Identified water body	Distance to (m)	Water body name(s) (code)	WFD Status	Risk of not achieving WFD Objective e.g.at risk, review, not at risk	Identified pressures on that water body	Pathway linkage to water feature (e.g. surface run-off, drainage, groundwater)
River Waterbody	120m	Kilmastulla-050	Poor	At risk	Shannon Lower	Not hydrologically connected to

							surface watercourse.
Groundwater waterbody	Underlying site	Nenagh SH-G-178	Good	Not at risk	N/A		Poorly productive bedrock
<b>Step 4: Detailed description of any component of the development or activity that may cause a risk of not achieving the WFD Objectives having regard to the S-P-R linkage.</b>							
<b>CONSTRUCTION PHASE</b>							
No.	Component	Water body receptor (EPA Code)	Pathway (existing and new)	Potential for impact/ what is the possible impact	Screening Stage Mitigation Measure*	Residual Risk (yes/no) Detail	<b>Determination** to proceed to Stage 2. Is there a risk to the water environment? (if 'screened' in or 'uncertain' proceed to Stage 2.</b>
1.	Surface	Kilmastulla-050	None	None	None	No	Screened out
3.	Ground	Nenagh SH-G-178	Drainage	Hydrocarbon Spillages	Standard Construction Measures / Conditions	No	Screened out
<b>OPERATIONAL PHASE</b>							
3.	Surface	_0500	None	None	None	No	Screened out
4.	Ground	SH-G-178	None	None	None	No	Screened out
<b>DECOMMISSIONING PHASE</b>							
5.	NA						



